86-1011

Supreme Court, U.S.
FILED
DEC 17 1986
JOSEPH F. SPANIOL, JR.
CLERK

[

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

---

MICHAEL McGOVREN, PETITIONER

VERSUS

THE PEOPLE OF THE STATE OF CALIFORNIA

---

# PETITION FOR A WRIT OF CERTIORARI

TO THE APPELLATE COURT OF CALIFORNIA

FIRST APPELLATE DISTRICT

---

THE PETITIONER
DE JURE SUI JURIS SOVEREIGN
IN PROPRIA PERSONA
IS WITHOUT AND WANTING COUNSEL

MICHAEL McGOVREN
207 WEST 7TH STREET
P.O.BOX 306
JASPER, INDIANA 47546

PHONES: 812-482-4100/4300

[ 17 DECEMBER 1986 ]

USSCCL03.DOC0010CERTIORARI PETITION COVER

32 pp

## QUESTIONS PRESENTED

1.1 Can the government constrain or limit the activities of a sovereign citizen by statutory scheme absent a showing of public harm or infringement of others' rights ?

1.2 Is my liberty limited only by: the principle that I must not interfere with the equal exercise of the same rights by others, and the requirement that I not harm the public interest ?

2. Can the legislature enact and the courts uphold and cause to be enforced, statutes which defacto constitute prior restraint and ex parte adjuducation of the competence of sovereigns to contract ?

3.1 Can the legislature in concert with the courts, abrogate my inalienable Constitutionally secured protection against government impairment of obligations of contract ?

3.2 Can the courts compell me to waive my Constitutionally secured right to incur unimpaired obligations of contract in order to exercise my right to Assistance Of Counsel ?

4. Can the accused sovereign be forced to proceed without Assistance Of Counsel when jurisdiction is being challenged ?

5.1 Can the court limit my choice of Assistance Of Counsel exclusively to an attorney who is beholden to the court, as an officer thereto, and who will inevitably be thusly constrained and inhibited in the execution of my defense to my detriment ?

5.2 Can the court limit my choice of Assistance Of Counsel exclusively to licensed attorneys who are evidently not interested in, or perhaps not competent on, the issues I wish to use in my defense and who are likely chilled ?

6.1 Can the legislature create a guild or craft/trade/labor union by statute and confer upon it a monopoly over a particular kind of labor/skill/service while prohibiting all others ?

6.2 Can the courts enforce a statute which has the function and effect of compelling a sovereign to hire exclusively from a statutorial monopoly endowed guild or craft/trade/labor union ?

7.1 Did the authors of the Constitutions err when they said "counsel" ?

7.2 Did the authors of the Constututions know and distinguish the word "attorney" from the word "counsel" ?

7.3 Did the authors of the Constututions get confused and use the word "counsel" when they really meant and intended to use the words "active licensed attorney member of the State Bar Association" ?

8.0 The petitioner believes and contends that all of the above questions are comprised and subsidiary in the following:

8.1 Can an Accused sui juris de jure sovereign be limited exclusively to licensed members of the bar, who are strangers, and thus denied Assistance Of Counsel of first choice ?

8.2 Can an Accused sui juris de jure sovereign be prohibited from having Assistance Of Counsel from his next friend ?

## T A B L E  O F  C O N T E N T S


QUESTIONS PRESENTED.....page F1

TABLE OF CONTENTS..... F5

TABLE OF AUTHORITIES..... F6

PRAYER.....page 1

OPINIONS BELOW..... 2

JURISDICTION..... 2

STATUTE INVOLVED..... 2

28 USC 2403(b) APPLICABILITY..... 2

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING THE WRIT.....page 6

PERVASIVE CONVERSION OF RIGHTS INTO PRIVILEGES..... 6

PERIL OF IRREPAIRABLE DAMAGE..... 8

REASONS WHY ASSISTANCE OF COUNSEL OF CHOICE SHOULD NOT BE SUPRESSED.. 10

CONCLUSION..... 20

APPENDIX

DECISION OF APPELLATE COURT..... A1

DECISION OF CALIF. SUPREME CT..... A2

## TABLE OF AUTHORITIES

Argersinger v Hamlin 407 US 25 ..... 19

Brotherhood of RR Trainmen v Va State Bar 377 US 1 ..... 19

Chandler v Fretag 348 US 1 ..... 19

CONSTITUTION OF THE UNITED STATES
Article I, Section 10.1:
"...obligations of contracts" ..... 12
Amendment V:
"assistance of counsel" .....12,18

CONSTITUTION OF CALIFORNIA
Article I, Secton 9:
"...obligations of contracts" ..... 12
Article I, Section 15:
"assistance of counsel" .....12,18

Crandall v Nevada 6 WALL 35 ..... 16

Dred Scott v Sandford 19 HOW 263 .... 7

Escabedo v Illinois 378 US 478 ..... 19

Hale v Henkel 201 US 43,74 ..... 7

Johnson v Arvey 394 US 483 ..... 19

Johnson v Zerbst 304 US 458 ..... 19

Kent v Dulles 357 US 116 ..... 16

Magna Carta Art 42 ..... 16

Powell v Alabama 289 US 52 ..... 19

Pratt v Harris 129 NE 277 ..... 13

Yick Wo v Hopkins 118 US 356 ..... 7

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

---

MICHAEL McGOVREN, PETITIONER

VERSUS

THE PEOPLE OF THE STATE OF CALIFORNIA

---

PETITION FOR A WRIT OF CERTIORARI

TO THE APPELLATE COURT OF CALIFORNIA

FIRST APPELLATE DISTRICT

---

Michael McGovren respectfully petitions and prays that a writ of certiorari issue to review the judgement and summary denial by the Appellate Court entered 5 Sept 1986, and the subsequent California Supreme Court summary denial of certiorari entered 23 Oct 1986.

## O P I N I O N S  B E L O W

TRIAL (MUNICIPAL) COURT, Case 207047:
On the hearing records: The court believes that unlicensed counsel is unlawful.

SUPERIOR COURT, Case H118491-6:
Mandamus summarily denied.

APPELATE COURT, AO 36019:
Reviewed. Summarily denied 5 Sept 1986.

CALIF. SUPREME COURT:
Certiorari summarily denied 23 Oct 1986.

## J U R I S D I C T I O N

The jurisdiction of this court is invoked under 28 USC 1257 (3) and 28 USC 1651(a).

## S T A T U T E S  I N V O L V E D

California Business and Professions Code

> Section 6125: "No person shall practice law in this State unless he is an active member of the State Bar."

## 28 USC 2403 (b) MAY BE APPLICABLE

Petitioner contends that no statute can interfere with him absent a showing of harm or interference with others' rights.

## S T A T E M E N T  O F  T H E  C A S E

As of the initial hearing in the trial (muni) court on 30 May 1986, I, the petitioner, appearing specially and not generally, stood accused of two infractions and a misdemeanor. Therein I strenuously demanded to have my very highly regarded friend, Mr. William Henshall as counsel. Mr. Henshall is extraordinarily knowledgeable of the issues in which I am interested and wish to advance in my defense. to wit: rights versus privileges: misapplication of statutory schemes upon sovereigns; cunning/suasive inducements to waive rights by fraudulent government imposed contracts of adhesion; stealthy encroachment toward conversion of rights into privileges; dissipation of liberties through statutory victimless crimes and

diminishment of personal responsibilities. I trust Mr. Henshall's knowlege of the relevant law and high court decissions.

I called this hearing solely to challenge jurisdiction based on fundamental defects in the scheme of application of the statutes to me.

When I attempted to obtain assistance of counsel from Mr. Henshall, a most extraordinary scene ensued. He attemped to be available to me in several different ways. i.e. as counsel, intervenor, CCP 87. He finally proposed to enter as amicus curiae but was again rebuffed vigorously by the court and he was ordered to sit in the back of the court room leaving me high and dry. The court proceeded with an extraordinary scene in which great effort and suasion was directed toward imposing a licensed (public defender) attorney upon me twice in two seperate episodes. I

refused to countenance the use of a stranger who is a licensed member of the bar who I do not know or want. The reason given by the court for prohibiting my use of Mr. Henshall was that he is not a licensed member of the bar. The court, evidently mindfull of the California Business and Professions Code, ruled that I would be allowed to use only licensed members of the bar for counsel.

The court emphasized it's belief that it would be unlawful for the court to allow Mr. Henshall to counsel me.

I emphasize that:

1. The court did not cite/claim any public harm would flow from Mr. Henshall's assistance of counsel.

2. The court did not cite/claim that Mr. Henshall's assistance of counsel would infringe or compromise anyone's rights.

Writ of mandate to Superior Court was summarily denied. Appellate Court reviewed and summarily denied. California Supreme Court denied certiorari.

I am without counsel. The court has violated my right to assistance of counsel of my own choice.

## REASONS WRIT SHOULD BE GRANTED

Legislators have a pervasive propensity to enact statutes creating victimless crimes. Government agencies have a propensity to acquire a life and raison detre sua sponte, and expand, consume and control the universe, imposing upon all creatures and things they find, such regulations, constraints, limits, tasks, and even duties, as suits their convenience in the pursuit of their objectives. They contort, distort and

pervert their mission, going beyond dulocracy to de facto reversal of the master-servant relationship of THE PEOPLE to the government. The lower courts tend to acquiesce and de facto join in the perversion of this relationship and THE LAW, forgetting that THE PEOPLE are sovereign [Yick Wo v Hopkins 118 US 356, Dred Scott v Sandford 19 HOW 263], apparently confusing and amalgamating them with artificial entities created by Congress to serve THE PEOPLE. They fail to distingiush critical differences in status which sets apart entities' different relationships with the government [Hale v Henkel 201 US 43,74]. They are imposing upon us sui juris de jure sovereigns as if we were creations of Congress, subserviant thereto, and beholden to them.

The instant case is an example wherein the legislature has enacted a

statute, and the courts below are applying it to me, failing to give cognizance to the significance of my status. They would manipulate me as if I were a corporation created by Congress or otherwise lower non sui juris, non de jure, non sovereign status. This is what the American Revolution was about. I hope you will stop this perversion of THE LAW and arrest this degeneration of our rights. By granting this writ you will take an important step toward restoration of our rights.

## I AM AT PERIL OF IRREPARABLE DAMAGE IF CERTIORARI IS DENIED AND I AM COMPELLED FORWARD WITHOUT COUNSEL

I am in jeopardy of not being able to properly set the record needed to establish a basis for appeal. I would thus suffer irreparable damage with no clearly apparent means of redress.

Without assistance of counsel competent on

the issues key to my defense, I am subject unnecessarily and unfairly to risk of failing to prevail either at trial or on appeal.

I have only a conceptual understanding of the issues I wish to use in my defense and can converse only superficially on the subject matter which is vital to my defense. The person I desire to have as my counsel has researched and studied the key issues extensively. I believe he is among the most knowlegable people in the country on the issues of interest. With this person as my counsel, my likelihood of prevailing on the critical key issues is enhanced. Without him: dismal. My fragile health also imposess severe limits on what I am able to accomplish solo in my defense.

REASONS WHY
ASSISTANCE OF COUNSEL OF CHOICE
SHOULD NOT BE SUPRESSED

1. I, the petitioner/defendant , am a sovereign, and as such, am not a subject of interest to the State to be constrained by statutory schemes which can apply only to non de jure non sui juris non sovereign entities. I insist upon full exercise of all my rights, limited only by the ethical, human decency, moral and lawful prohibition against transgressions of others' rights.

The prosecution has not even attempted to bring forward any evidence which proves that the petitioner is a ward of the State or of any court. No evidence of any knowing and intelligent and willful waiver of rights has been presented. Nor evidence or even any claim that the exercise of my right to assistance of unlicensed counsel of choice will harm or

infringe upon other's rights.

My having assistance of unlicensed counsel of choice will not infringe or interfere with anyone's rights in any way whatever, therefor to interfere with my choice of counsel is a violation of my rights.

This is not a matter of conflicting rights which must be adjudicated by balancing and mediating a middle ground between opposing interests. There is no conflict of rights. This is only a flagrant, gross, unmitigated, intolerable violation of my rights.

I demand counsel of choice, unconstrained by statutory schemes or anything else.

2. The legislation constitutes prior restraint and ex parte adjudication of the competence of both parties to the

contract.

3. I insist on exercising my constitutionaly affirmed, unalienable right to contract for services and goods, including legal services, limited properly only by the requirement that I not harm others. The application of any statutory scheme to me which encumbers or constrains my contracting activities is a violation of my sovereign rights and is absolutely prohibited by:

> The Constitution of the United States, Article I, Section 10.1:
>
> "No State shall...pass...any law impairing the obligation of contracts,...";
>
> and The Constitution of California, Article I, Section 9:
>
> "A ... law impairing the obligation of contracts may not be passed."

No evidence has been proffered which shows that my unrestricted contracting for assistance of counsel will harm anyone.

No evidence has been proffered which

shows a compelling interest and need for the state to interfere with or regulate who I am permitted to contract with for assistance of counsel.

My unalienable, Constitutionally affirmed right of protection from government impairment of obligations of contract has been violated.

4. Jurisdiction of the trial court has been challenged and is an unsettled issue. Licensed attorneys/counselors are officers of the court. The participation of licensed counsel on behalf of the defendant would automatically convey jurisdiction to the court.

> "A plea to the jurisdiction of the person must be pleaded in person and not by an attorney. If pleaded by an attorney it is a submission to the jurisdiction of the court."
> Pratt v Harris 129 NE 277.

Being thus deprived of the use of an attorney, does it follow that the accused

has no other recourse for assistance to present his arguments and thereby be heard in his own defense ?

5. Licensed members of the state bar serve as officers of the court at the pleasure of the court. If a licensed counselor/attorney irritates the court, or agitates to the displeasure of the bar association, he is at risk of disbarment. The bar member dare not use aggressive tactics in court or raise issues which will cause a significant perturbation of the legal establishment. Even judges will shy away from a sensitive issue and rule against a defendant, in spite of the argument's merit, to avoid the unpleasant political consequences. And The Honorable Rose Bird's recent experience with confirmation election is a graphic example of the evils connected with the democratic

form of government and definitely will tend to exacerbate this problem. FEDERALIST PAPERS Numbers 76 and 77 give an exposition of the proper principles of a republic on this subject.

Judges are not immune to intimidation from the establishment and attorneys are even more vulnerable to suasion.

Among the issues I wish to raise in my defense is a challenge to the foundation principle of the entire automobile driver's license and registration scheme. I am convinced that if it is properly challenged it will not pass constitutional muster. Of course this will cause a long overdue perturbation to the established system and significantly re-arrange the legal landscape on this subject matter. Licensed counselors/ attorneys, who are interested and highly competent in this concept of right versus

privilege, and who are willing and able to develope this issue and win, are few, to rare, to non-existant. If they were interested in this over-ripe issue, they would have long ago attacked and disposed of this conspicuous degeneration which mitigates to blur the crucial distinction between rights and privileges, and worse yet: convert rights into privileges. Travel is clearly a right and not a privilege [Kent v Dulles 357 US 116, Crandall v Nevada 6 WALL 35, Magna Carta Art 42]. Licensed attorneys have had a long time to clean this pregnant one up, but they have avoided the issue. They are clearly useless for this issue. I suspect one reason is that they are chilled. Maybe they would make less money under a proper system ?

Licensed attorneys are useless to counsel me on the main issues of interest.

6. Statutory guild and craft/trade/labor union economic exclusivity is tantamount to conveying nobility status and is a fundamental violation of the free enterprise principles at the foundation of this Nation. It is a violation of basic liberty in personal affairs. It impairs obligations of contract.

There is more supportable public interest in granting exclusive monopolistic dominion over all truck driving to the Teamsters Union than assistance of counsel services to members of the State Bar Association. Those trucks can kill if they are not properly driven.

Any contention that a public interest is at stake in these matters is prima facie absurd. Any logic or scheme of rationalizations that could be proffered to support exclusivity of the Bar Association, could just as well be used as

excusses to eliminate a panoply of other liberties ad infinitum.

7. The Constitutions affirm the right to ASSISTANCE OF COUNSEL in criminal matters. The word "attorney" was in common use amongst the authors of The Constitution and many of them were attorneys. That "attorney" and "counsel" were/are not synonyms, but rather two very distinctly different things is not doubtable. That the choice of the word counsel was deliberate and discriminating cannot be doubted. It cannot be construed that "counsel" connotes a licensing requirement. But, it is open to construal that an accused may not necessarily have a Constitutionally affirmed/secured right to an ATTORNEY. The use of an attorney is not prohibited, and such right may be extant via other sources not explored herein.

To posture that the authors intended then, or would now in the space age amend/recast The Constitution, to require counsel to be licensed is an unsupportable absurdity and antithetical to what they were about.

I know of no person in a position of power and responsibility who is of a comparable stature of statesmen as were Madison, Jefferson, Paine, Franklin, et.al. Hands off my precious Constitution.

8. The right to <u>assistance of counsel of choice</u> has been upheld by the higher courts numerous times. [Brotherhood of RR Trainmen v Va State Bar 377 US 1,Chandler v Fretag 348 US 1, Johnson v Zerbst 304 US 458, Johnson v Avery 393 US 483, Escabedo v Illinois 378 US 478, Argersinger v Hamlin 407 US 25, Powell v Alabama 289 US 52]

## C O N C L U S I O N

By denying assistance of counsel of choice the court below is imposing upon me a petty tyranny which is completely unrelated to any concern for optimal operation of the process of justice. The trial court has the power to judicially notice the reality extant in the instant situation and refuse to apply the statute to me. The trial court knows Mr. Henshall, my counsel of choice, and knows his dedication and competence on the salient issues. He has demonstrated ample acuity in court on his own behalf and as a party to litigation.

The extreme absurdity of the contrast between what is, and what should be is cognizable to any layman. Either I can have a licensed attorney or I must go bare; nothing inbetween. This is clearly a

punishment for failing to give the licensed establishment its 'due'. This has nothing whatever to do with the process of justice. This is thoroughly improvident behavior. If the courts below were even slightly concerned about me getting the fullest possible oportunity to effect my defence they would not tolerate any constraint at all on my activities. And the trial court certainly would not have thrown out of the court room a person who tried to communicate with me during the hearing. What is the court's problem ? How was justice served by supressing that communication ? I have a right to know and I demand to know.

There is no question about the outcome of submitting this matter for referendum. THE PEOPLE would certainly insist upon the basic freedom that I herein demand.

The objective function and effect of the statute is to establish a particular entity as a monopoly exclusive supplier of a kind/type of service, and prohibit all others.

THE STATUTE SIMPLY ABSOLUTELY CERTAINLY CANNOT APPLY TO ME, A SOVEREIGN.

PLEASE GRANT CERTIORARI.

In Propria Persona
Without and wanting counsel

Michael McGovren
207 West 7th Street
P.O.Box 306
Jasper, indiana 47546

this sheet is a restatement of an order issued by the California Supreme Court on 23 October 1986.

O R D E R  D E N Y I N G  R E V I E W

AFTER JUDGMENT BY THE COURT OF APPEAL

1st Districst, Division 5, No. A036019

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

I N  B A N K

==========

MICHAEL McGOVREN, Petitioner,

v.

SUPERIOR COURT
OF THE COUNTY OF ALAMEDA,respondent;
PEOPLE, Real Party in Interest.

==========

Petition for review DENIED.

/signed/ BIRD
Chief Justice

this sheet is a restatement of an order issued by the Court of Appeal 5 Sept 1986.

---

COURT OF APPEAL
In and For the
FIRST APPELLATE DISTRICT
Division Five

| | | |
|---|---|---|
| MICHAEL McGOVREN, | ) | No. A036019 |
| Petitioner, | ) | |
| | ) | |
| vs. | ) | ALAMEDA COUNTY |
| | ) | SUPERIOR COURT |
| ALAMEDA COUNTY | ) | [ No. 207047 ] |
| SUPERIOR COURT, | ) | [the number above] |
| Respondent, | ) | [is erroneous. ] |
| | ) | [the correct ] |
| THE PEOPLE OF THE | ) | [number is ] |
| STATE OF CALIFORNIA, | ) | [ H118491-6 ] |
| Real Party in Interest) | | |

BY THE COURT

The petition for writ of certiorari/mandate is denied.

Dated: stamped SEP- 1986

stamped LOW, P.J. P.J.